

RECEIVED
CENTRAL FAX CENTER

FEB 09 2007

REMARKS

Response to Claim Objections

Claim 1 was objected to by the Examiner because of the following informalities:
In line 3, "fro" should read as "for". Claim 43 was objected to by the Examiner because of the semi-colon at the end of line 2 should be a period. Applicants have amended these claims to correct the informalities referred to by the Examiner.

Response to Double Patenting

Claims 1, 40-46, 48-59 and 62 were rejected by the Examiner on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3-7 and 9-15 of U.S. Pat. No. 6,331,166 B1.

Claims 47, 60 and 61 were rejected by the Examiner on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3-7 and 9-15 of U.S. Pat. No. 6,331,166 B1 in view of Burbank et al. (U.S. Pat. No. 6,699,206 B2).

Applicants have filed concurrently a Terminal Disclaimer (By Attorney) to avoid these rejections.

Response to Claim Rejections Under 35 USC §112

Claim 43 was rejected by the Examiner under 35 U.S.C. §112, first paragraph, because the specification, while being enabling for a distal cutting edge, does not reasonably provide enablement for a curvilinear cutting surface. However, Figures 1-3, 8-10, and 17-19 illustrate an electrosurgical cutting element which has a curvilinear tissue cutting surface () at the distal tip.

Response to Claim Rejections Under 35 USC §102

Claims 1 and 41 were rejected by the Examiner under 35 U.S.C. §102(e) as being anticipated by Patterson et al. (U.S. Pat. No. 5,941,869). The Patterson reference discloses a method for removing stenotic material from within a stent. The device used in the Patterson method is advanced through the patient's vasculature so there is no tissue cutting surface on the distal end or tip of the device as called for in the present claims. The applicants submit that the device described in the Patterson reference does not teach or disclose a device which has a tissue cutting surface on the distal end as called for in the present claims. In view of the fact that the Patterson reference does not disclose all the features of the claimed invention, the reference cannot anticipate the rejected claims.

Claims 1, 40, 48, 50, 53, 54, 56-58 and 60-62 were rejected by the Examiner under 35 U.S.C. §102(e) as being anticipated by McGuckin, Jr. (U.S. Pat. No. 6,280,450 B1). McGuckin, however, does not teach a device having a tissue cutting surface longitudinally disposed on a distal portion of an elongated shaft proximal to a tissue cutting surface on the distal end or tip of the elongate shaft. In the McGuckin, Jr. device there is no shaft extending between the tissue penetrating member 65 and the end of the shaft 20 (erroneously described as a proximal end). The blades extend between the distal end of the shaft (20) and the tissue piercing member 65. This reference does not teach all the claimed features, so this reference cannot anticipate the present claims.

Response to Claim Rejections Under 35 USC §103

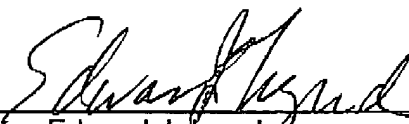
Claims 42, 44-47, 49, 51, 52, 55 and 59 were rejected under 35 U.S.C. §103(a) as being unpatentable over McGuckin, Jr. (U.S. Pat. No. 6,280,450 B1) as applied to

claim 40 above, and further in view of several secondary references, namely, Hassler, Jr. (U.S. Pat. No. 5,674,184), Eggers et al. (U.S. Pat. No. 5,810,764), Patterson et al. (U.S. Pat. No. 5,941,869) and Kieturakis (U.S. Pat. No. 5,794,626). As discussed above, McGuckin does not teach a device having an elongated shaft with a tissue cutting surface at the distal end or tip and a first electrosurgical tissue cutting member longitudinally disposed on a distal portion of the shaft. There is no suggestion in these secondary references to combine the teachings thereof with McGuckin, Jr. Therefore the references do not render the claimed invention unpatentable under 35 U.S.C. §103.

Conclusion

Applicants believe that the pending claims are directed to patentable subject matter. Additionally, applicants have filed concurrently herewith a petition to revive this application with an appropriate fee. Reconsideration of the claims and an early allowance of these claims are earnestly solicited.

Respectfully submitted,

By: 
Edward J. Lynch
Attorney for Applicants
Registration No. 24,422

DUANE MORRIS LLP
One Market
Spear Tower, Ste. 2000
San Francisco, CA 94105
Telephone: (415) 957-03000
Facsimile: (415) 957-3001
Direct Dial: (415) 957-3067